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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 24 November 1993, at 3 p.m.

Chairperson: Mr. ALSTON

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GE.93-19545 (E)

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued) (agenda item 4)

Initial report of Nicaragua concerning rights covered by articles 10 to 12 of the Covenant (E/1986/3/Add.15; E/1986/3/Add.16; E/C.12/WG/1992/CRP.2/Rev.1)

1. At the invitation of the Chairperson, Mr. Sevilla Siero and Mr. Miranda Castillo (Nicaragua) took places at the Committee table.

2. Mr. SEVILLA SIERO (Nicaragua), introducing the report concerning rights covered by articles 10 to 12 of the Covenant, said that he would be referring mainly to document E/1986/3/Add.16, dated 29 April 1993, since the other report (E/1986/3/Add.15), dated 9 February 1990, had been submitted by the previous Government. The change of government had not been a mere routine change of the team in power, but had involved a genuine transformation of Nicaraguan society. On 25 April 1990, Nicaragua had embarked on a process of extensive change which, politically speaking, represented the transition from a decade of ideological authoritarianism to an era of democratic openness and, socially and economically, from a planned to a free economy. The change was by no means painless, since privatization, which was necessary in the context of a stabilization and adjustment programme, had to be achieved in such a way as to preserve the social advances that had been made.

3. To understand the difficult situation in Nicaragua, it was necessary to set it against the background of events in the Eastern bloc, which had changed the political contours of the South. Nicaragua had not escaped the consequences of the changes and had undergone the difficult experience of having aid withdrawn by the super-Power with which it had formerly been in alliance. Those circumstances should be constantly borne in mind in considering the report of Nicaragua, the economy of which had experienced such imbalances during the 1980s that it had collapsed completely in 1989 and 1990. Inflation, for example, had reached record levels for Latin America and probably for the entire world, having gone as high as 43,000 per cent. Similarly, the foreign debt on 25 April 1990 had amounted to almost $10 billion, which was over 30 times higher than the volume of exports and more than 4 times the gross domestic product. The standard of living had, of course, fallen to an alarming extent: whereas in 1977 - the last year that could be considered normal from the economic point of view - a secretary had had to work on average 35 days in order to buy a refrigerator, in 1988 she would have had to work 6,000 days to make the same purchase.

4. The absolute priority of the Government, which had inherited 11 years of catastrophic social and economic decline, had been to stabilize the situation by correcting the massive fiscal and monetary imbalances. On the political level, the new Government had sought to establish a State governed by the rule of law and, on the economic and social level, to induce all social partners to work together in order to achieve national reconciliation, thus creating favourable conditions for investment and economic revival.

5. The situation, however, was such that the country's own efforts had not proved sufficient and it had had to appeal for external assistance. A donor

conference had therefore been held in Rome in June 1990 and Nicaragua had endeavoured to obtain a continuation of its favourable treatment. The stabilization and structural adjustment policy aiming at the recovery of the economy had been adjudged satisfactory by international financial bodies and by the Governments with which Nicaragua had had to negotiate its foreign debt. Most Nicaraguans, too, saw the policy as a way out of the disastrous inflationary spiral.

6. In its concern at the effects of economic adjustment measures on the most vulnerable sections of the population, the Nicaraguan Government had launched two major emergency programmes, described in the report (paras. 77 and 78): the Emergency Social Investment Fund and the Fund for the Underprivileged Sectors.

7. Introducing the report dated 29 April 1993 (E/1986/3/Add.16), he recapitulated its main headings, stressing that, given the indivisibility of human rights, it also dealt with certain civil and political rights. First, he wished to complete the data given on page 2 of the report: according to a United Nations Development Programme survey, unemployment stood at 20.1 per cent of the active population and underemployment in the informal sector amounted to 31 per cent. Paragraph 74 stated that the Nicaraguan Government had set up the Office of the Human Rights Ombudsman; at the time that the report had come out the establishment of the Office had indeed been imminent, but Parliament had had to attend to other extremely urgent matters and had been compelled to postpone the establishment of the Office, which would, however, take place without much further delay.

8. The report brought out the efforts made on behalf of women's rights and the protection of the family, mothers and children. Considerable space was also devoted to orphans and abandoned children, who unfortunately represented about 15 per cent of the total population of the country. They were cared for by various State bodies, whose role was described in the report, which also dealt with measures to promote physical and mental health and environmental protection programmes.

9. He called the Committee's attention to the annexes transmitted to the secretariat together with the report. One, which was in three parts, related to housing. Another related to the calorie and protein content of food in Nicaragua; it was an important issue, since Nicaraguans suffered from nutritional deficiencies due to excessively low protein consumption, whereas carbohydrates were amply provided by the consumption of maize, beans and rice. The third annex contained the text of the current Constitution, which dated from 1987.

10. He said that he was ready to answer any questions that the Committee might have.

11. In reply to questions from Mr. SIMMA and Mr. WIMER ZAMBRANO, the CHAIRPERSON said that the first report (E/1986/3/Add.15) had been issued by the previous Nicaraguan Government and that the new Government had decided to submit an entirely new one, on which it was to be congratulated. The list

of issues (E/C.12/WG/1992/CRP.2/Rev.1) was therefore no longer relevant and the questions there raised should be seen as being answered in the new report (E/1986/3/Add.16), dated 29 April 1993.

12. Mr. SIMMA regretted that the annexes mentioned by the representative of Nicaragua had not been made available to the Committee, since they bore on important issues. Generally speaking, the procedure whereby any document designated as an annex was placed on file without being either translated or incorporated in the document was not satisfactory, since it deprived members who did not speak the language in which the annexes were written of a significant source of information.

13. The CHAIRPERSON suggested that the annexes to the report should be distributed as soon as they could be photocopied. The question raised by Mr. Simma was, however, important and the Committee would have to find a solution to the problem of annexes. Rather than following some automatic procedure, it would certainly be preferable for the secretariat to consult the Rapporteur or the Chairperson every time it received a document entitled "annex", to determine whether it was worth translating.

14. Mr. ALVAREZ VITA said that the problem of documentation was a recurrent one, which required some thought. Although the United Nations financial situation was undoubtedly critical it should be possible to find compromise solutions, such as requesting countries to submit a summary of the annexes, which would then form part of the document and would therefore be translated.

15. In the case under consideration he proposed that the Committee should postpone any questions regarding housing, with which the annexes were concerned, until members had had the opportunity to read the annexes.

16. It was so decided.

17. Mr. CEAUSU, referring to the report dated 29 April 1993 (E/1986/3/Add.16), noted differences between the figures given for life expectancy on pages 2 and 3 of the report, appearing first as 66 years for men and 58 for women and then as 64 years for men and 68 for women, and also those given in a table distributed by the World Health Organization, according to which life expectancy was 62 years for men and 64 for women. He asked which figures were to be believed.

18. Mr. ALVAREZ VITA said that he was conscious of the enormous difficulties encountered by Nicaragua. In the face of both economic problems and natural disasters he was concerned to know how the authorities had been able to help victims of the hurricanes on the Atlantic coast. He also requested information on the measures taken to reintegrate refugees, of whom there were so many in Central America. He particularly wanted to know whether the Government had a policy of encouraging the repatriation of refugees and whether it possessed the necessary infrastructure for receiving a flood of repatriated people. Detailed information should also be given on the overall situation of the Miskitos on the Atlantic coast. Given the particularly difficult situation of Nicaragua and bearing in mind the provisions under the Covenant for appealing for international assistance, he was eager to hear details concerning a "group of friends of Nicaragua" which had recently been

set up in Madrid and included Canada, Germany, Mexico, Norway, Spain and Sweden. He wondered what kind of aid, and in what percentage, each of those countries had promised to provide and what mechanism had been set up to that end; more generally, he wondered whether Nicaragua received adequate international assistance.

19. Mr. MARCHAN ROMERO congratulated the Nicaraguan Government on its efforts to reconstruct the country. His questions to the Nicaraguan delegation concerned the report dated March 1990 (E/1986/3/Add.15).

20. Paragraph 7 of that report dealt with the demobilization of the Nicaraguan resistance. How many members of the resistance had been relocated in Nicaragua and how many in third countries?

21. Paragraph 21 concerned the specific measures under the Social Security Act to help mothers to support their children in the event of the death or absence of their husbands. He asked whether the husband had to be officially declared dead or absent before his wife could benefit from such measures.

22. He wanted to know the exact meaning of the term "vagrancy" used in paragraph 34.

23. Mr. TEXIER said that Nicaraguan history had not begun in 1990 and recalled that the country had been subjected to the dictatorship of the Somoza family, which had appropriated a considerable proportion of the national wealth. Moreover, the conflict which had torn the country apart following the overthrow of the dictatorship had cost it very dear.

24. He noted that paragraph 3 of the report dated 14 June 1993 (E/1986/3/Add.16) stated that it was recognized that the implementation of stabilization and adjustment programmes entailed a deterioration in the standard of living of the most vulnerable sectors of society. That sentence sounded uncomfortably like a declaration of war on the economic, social and cultural rights set out in the Covenant, which Nicaragua was, none the less, committed to respecting. In that connection he pointed out that, according to the International Labour Organisation, 70 per cent of Nicaraguans lived below the poverty line.

25. He regretted that the report dealt more with civil and political rights than with economic, social and cultural rights.

26. Paragraph 119 stated that social assistance had increased over the previous years, while at the same time for various reasons, the number of victims had also risen. He wondered if the Nicaraguan delegation could explain the apparent contradiction.

27. As for housing, the organization Habitat International Coalition had stated that the number of evictions was on the increase. The Mayor had recently called out bulldozers and riot squads to evict 500 families from what was considered a vulnerable district of Managua. Had those families been rehoused and, if so, under what conditions?

28. Mr. MIRANDA CASTILLO (Nicaragua), replying to one of Mr. Alvarez Vita's questions, said that Nicaragua had indeed been badly affected by several natural disasters. The Government had given the victims such limited assistance as it could and appealed for international aid.

29. The "friends of Nicaragua" group of countries, recently established in Madrid, had the objective of contributing to improving the country's political, economic and social situation.

30. Mr. SEVILLA SIERO (Nicaragua), replying to a question from Mr. Alvarez Vita, said that of the 47,000 Nicaraguans who had been refugees in Costa Rica at the beginning of 1990, 12,000 had been repatriated in June 1992. Since then there had been a slow-down in the rate of repatriation, which was voluntary.

31. As far as financial aid to Nicaragua was concerned, the contribution of the Nordic countries amounted to $ 110 million per annum, which was more than the contribution of the United States of America. The position of the Miskitos, which was dealt with in paragraphs 91 to 93 of the report in document E/1986/3/Add.7, had improved since promulgation of the law on the independence of the Atlantic region, which granted greater independence to the region's indigenous communities. The fact that indigenous American movements had met recently in Managua and established their secretariat headquarters was a token of that improvement.

32. Some 22,000 members of the former Nicaraguan resistance, had taken part in the demobilization process.

33. He explained that the "absence of their husbands" referred to in the Social Security Act mentioned in paragraph 21 of document E/1986/3/Add.15, meant unjustified absence.

34. The expression "vagrancy" used in paragraph 34 referred to children of no fixed abode.

35. In reply to a question from Mr. Texier, he said that the Nicaraguan delegation had never said that the history of Nicaragua started in 1990. It had taken that date as a point of departure for its statement merely for methodological reasons.

36. Since civil and political rights and economic, social and cultural rights were inextricably interwoven, it was difficult to speak of the former, to which the major part of the report was devoted, without mentioning the others.

37. The Nicaraguan Government had never had any intention of declaring war on economic, social and cultural rights. It was precisely because it was aware of the adverse effects of adjustment programmes on the standard of living of the most vulnerable sectors of society that it had drawn up an action plan to combat poverty and preserve the social advances of the revolution (see para. 155 of document E/1986/3/Add.16). It should also be borne in mind that, in order to rehabilitate the country's economy, the Government of Nicaragua had had no choice but to adopt adjustment programmes.

38. Mr. MIRANDA CASTILLO (Nicaragua) reminded Mr. Texier that when Mrs. Chammoro became President in 1990, the level of production had been the same as in 1940.

39. The Nicaraguan delegation would try to reply next day to Mr. Texier's questions on paragraph 119 of the report and on the 500 families said to have been expelled from a neighbourhood of Managua.

40. Mr. Muterahejuru took the Chair.

41. The CHAIRPERSON asked whether members had any other questions or any comments to make.

42. Ms. TAYA noted that according to information provided by the secretariat, funds transferred by Nicaraguans living abroad were estimated at US$ 110 million per year and were currently Nicaragua's largest source of foreign currency; that export earnings had been estimated at $225 million in 1988; and that contributions under official development aid - i.e. external financial assistance, either bilateral or multilateral - had totalled $316 million in 1990. Although those figures did not relate to the same year, they did seem to indicate that the Nicaraguan economy was largely dependent on ODA, and she wished to know the share, in percentage terms, of ODA contributions in the national budget of Nicaragua as a whole in 1990.

43. As all were aware, in the 1980s the World Bank and the IMF had started to grant debtor countries loans for structural adjustment. Structural adjustment as a macroeconomic policy was a two-edged sword: it helped to develop the national economy while obliging the country to repay its foreign debt, but at the same time the effect of the measures adopted was to make the most disadvantaged sections of the population even poorer. According to the information provided by the secretariat, the daily calorie intake in Nicaragua in 1965 had totalled 107 per cent of needs; between 1988 and 1990 it had fallen to 90 per cent; the per capita GDP had started to decline in 1977, as had the share of the manufacturing sector in the GDP and the index of industrial production from the beginning of the 1980s, while consumer prices had increased considerably since 1988. She therefore wished to know the date on which Nicaragua had been granted a structural adjustment loan and what was the share, in percentage terms, of that loan in the external financial contributions as a whole. What did the authorities think of the structural adjustment carried out in Nicaragua? Was it a major cause of the slow-down in the economy and the decline in the country's standard of living? Had the Government taken special measures to combat the effects of the structural adjustment by giving more active support to disadvantaged sections? Among other matters, was distribution of landed property fair or, if not, was the Government intending to distribute the land more fairly in the hope of increasing productivity?

44. Mr. SIMMA said that, although the international financial institutions had approved the structural adjustment policies carried out by the Government of Nicaragua, that did not relieve Nicaragua of its obligations under the Covenant, and the authorities were still obliged to do their utmost to ensure, inter alia, enjoyment of the right to a decent living, health and adequate food. However, the situation in Nicaragua was such that he wondered whether

the Government had taken those obligations into account when adopting the structural adjustment policies in question. According to data collected by ILO and FAO, nearly 70 per cent of the population of Nicaragua did not have a minimum living wage, and a study carried out by a non-governmental organization showed that at least 70 per cent of the population would probably not have adequate housing and urban services if, as it appeared, the Government allowed market forces to operate in those sectors. He requested that the report drawn up by Habitat International Coalition in November 1992 following a fact-finding mission in Nicaragua should be transmitted to the Nicaraguan delegation, so that it could give its views on those findings at a later stage.

45. Mrs. BONOAN-DANDAN, referring to pages 26 to 30 of the report of Nicaragua (E/1986/3/Add.16) containing comprehensive data on children in especially difficult circumstances, said that she failed to understand how Nicaragua could have over 600,000 children in such situations - one third of the total child population - and in paragraph 153 acknowledge that that was a "genuine national emergency", but that Nicaraguan society could remain largely unaware of the situation, as was stated in paragraph 148. In any case there were simply too many such children for the Nicaraguan authorities to ignore the problem. The Committee did not expect their action to resolve the difficulties - after all, Nicaragua was a developing country - but in order to have a clear idea of the position the members of the Committee must have accurate data on what was being done for such children and on the results achieved, however modest they might be. For instance, what proportion of the national budget was allocated to the social welfare of those children?

46. Mr. GRISSA called on the members of the Committee to show more patience and understanding towards Nicaragua, just as they had shown to Lebanon, which was in a similar situation and had submitted a comparable report. Nicaragua had been devastated by earthquakes and hurricanes and was still in the middle of a civil war. How, then, could the Nicaraguan Government be expected to carry out structural adjustment programmes smoothly when such programmes involved serious employment and other problems in developed countries like France? How could one ask why Nicaraguans did not have decent housing when the country had a foreign debt of $10 billion, the interest on which represented one third of its GDP, or twice the value of its exports?

47. Mr. SIMMA said that he wished to make it clear that he was quite well aware of the difficulties facing Nicaragua and was merely trying to find out, on the basis of actual facts, the extent to which the structural adjustment policies implemented by the Nicaraguan authorities were compatible with the letter and the spirit of the Covenant.

48. Mr. ALVAREZ VITA, referring to the document on housing that the Nicaraguan delegation had distributed in the meeting room to the members of the Committee as supplementary information, noted that, according to the Nicaraguan authorities, there had been a housing problem for decades: housing had developed in a disorganized way because of urban migration and the country still did not have enough housing units of acceptable quality. The authorities acknowledged, on page 1, that the improvement of housing should be

one of Nicaragua's priority aims, while stating that there was no national housing policy: what was the explanation of that contradiction? What, at least, was the proportion of the budget devoted to housing?

49. Moreover, how could the fact that house building, according to page 6 of the supplementary information, had been governed in the past by the liberal principle of supply and demand and that private capital had served to build housing for privileged population groups, be reconciled with the statement in paragraph 1 of document E/1986/3/Add.16 to the effect that the extensive changes in the country's economic and social structure embarked upon by the present Government were essentially aimed at liberalizing the economy? According to page 10 of the supplementary information, in 1985 there had been cases of two families living in the same housing unit and five to six persons sharing a bedroom; 25 per cent of the population had had no sanitary facilities and more than 42 per cent had had no access to drinking water. It was stated that in the meantime the situation had worsened. The Committee needed more recent figures in order to form a clearer view of such problems. The supplementary information mentioned the results obtained in housing construction projects carried out by the Government with external assistance or with domestic resources, but did not indicate what type of housing units were involved, whether they had been built in Managua or in rural areas or the criteria on which they had been allocated. He would like clarification on all those points.

50. In the report by Terre des Hommes, a non-governmental organization, mention was made of various problems facing Nicaragua in employment, education and social security, and the effects of those problems on women. He asked whether the Nicaraguan delegation considered the figures given in that document to be accurate or realistic - for example, was it true that there were more than 750,000 unemployed in the country today? It would also be helpful for the Committee to have previous data in order to arrive at a better understanding of Nicaragua's current position.

51. On the question of the structural adjustment policy to which many members of the Committee had referred, he pointed out that to cope with the aftermath of an extremely violent civil war and the problems of an enormous foreign debt, Nicaragua, like other developing countries, had had to make up its mind to make adjustments which were, unfortunately, leading to a massive violation of human rights. But how could the country be blamed for measures imposed upon it by the international financial institutions as a condition of its survival? Rather than criticizing Nicaragua, the Committee should try to identify the causes of the difficulties facing the country and indicate measures that might be taken to redress the situation somewhat. Moreover, the Committee should study the problem as a whole rather than dwell upon one or two points.

52. Mr. Alston resumed the Chair.

53. Mr. TEXIER said that it would be important to know what the situation was regarding implementation of Acts No. 85 (Ley de Transmisión de la Propiedad de Viviendas ...) and No. 86 (Ley Especial de Legalización de Viviendas y Terrenos) which had been passed just before the Government came to power, on 25 April 1990. He recalled that the aim of those acts was to enable

disadvantaged persons occupying housing or land belonging to the State or other owners to become their legal owners. He also referred to the problems, polemics and legal insecurity that had surrounded the implementation of that legislation and asked whether establishment of the Oficina de Ordenamiento Territorial (OOT) by virtue of Act No. 35-91 had led to any progress, since it was also mentioned in the Nicaraguan report that only 2,300 cases had been dealt with under Act No. 85 and only 13,000 out of 61,000 in implementation of Act No. 86. He also asked what practical steps had been taken by the Government explicitly to make good the shortfall which according to annex 3 was approximately 350,000 to 380,000 housing units.

54. The CHAIRPERSON invited the representative of Nicaragua to reply to the questions of the members of the Committee.

55. Mr. SEVILLA SIERO (Nicaragua) said that in view of the diversity and complexity of the Committee's questions he would like to be able to do some research and be able to give more detailed replies at the following day's meeting.

56. The CHAIRPERSON noted the Nicaraguan reply and gave the floor to members of the Committee wishing to ask supplementary questions.

57. Mrs. IDER said that to enable her to form a more accurate idea of the way in which the Covenant was applied in Nicaragua, it would be useful to know how many complaints concerning human rights violations had been submitted in Nicaragua and how many had had a successful conclusion. Clarifications would also be useful on paragraphs 62, 63 and 64 of the Nicaraguan report.

58. With respect to the services of the Office of the Human Rights Ombudsman responsible for monitoring observance of the human rights agreements which Nicaragua had ratified (mentioned in para. 74 of the report (E/1986/3/Add.16)), it would be useful to know whether that was a State body or a non-governmental organization, and its composition and activities, particularly in view of the need for Nicaragua to have a body that could deal effectively with the many cases of human rights violations in the country. It would be useful for the Committee to hold a special meeting to study the problems besetting Nicaragua, which, like many countries of the third world, had a difficult choice to make between economic development and the improvement of social welfare. A special method and special criteria should be evolved to evaluate the action taken by the Governments in question, in the light of their level of development and resources which, particularly in the case of countries in transition towards a market economy, were subject to conflicting pressures.

59. The CHAIRPERSON said that the Committee was aware of the fact that adopting certain economic programmes could involve a drop in living standards. That was why, in paragraph 9 of his second general observation (E/C.12/1990/3, annex III), he had voiced his concern at the adverse effects of the debt burden and of economic adjustment programmes on the exercise of economic, social and cultural rights in a great many countries, but that States parties should step up their efforts to protect the most basic economic, social and cultural rights and to guarantee acceptable conditions of life to all citizens.

60. Mr. SEVILLA SIERO (Nicaragua) said that the contradictions that Mr. Alvarez Vita had pointed out between the various parts of annex 3 of the report were explained by the fact that the first part (pp. 1-10) had been drafted by the previous Government while the second (pp. 11-22) was the work of the present Government. That had resulted in differences of style.

61. He considered that Mr. Simma's statement to the effect that the Nicaraguan Government's action was not leading to a furtherance of the rights under the Covenant, was too categorical and hasty, and took no account of Nicaragua's obligation to make the transition from a State-controlled centralized economy to a free market economy in particularly difficult conditions. Great difficulties were involved in the change of political direction in Nicaragua, where stress was now being laid on civil and political rights, which had previously been considered individualistic and neglected in favour of other rights considered to be of a more collective nature.

62. The CHAIRPERSON recalled that the Committee was dealing with social and economic rights as individual and not as collective rights. He considered, therefore, that individual rights should prevail in all circumstances.

The meeting rose at 5.58 p.m.